IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4916 of 1998

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PASIBEN AMBALAL CHAUHAN

Versus

STATE OF GUJARAT & Ors.

Appearance:

1. Special Civil Application No. 4916 of 1998

MR MEHUL H RATHOD for Petitioner

MR MS RAO AGP for Respondent No. 1

M/S PATEL ADVOCATES for Respondents No.2 & 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 16/06/2004

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by the action of the respondents in not allowing the petitioner to take voluntary retirement with effect from the month of October, 1970 and not paying the petitioner retiral benefits, the petitioner has preferred the present petition. The facts leading to the present petition are as under :-

The petitioner joined service as a Primary School Teacher on 1st May, 1945. On 1st July, 1970, by order made by the District Primary Education Committee, the petitioner came to be transferred from Patan to village Kamali, Taluka-Sidhpur. The petitioner did not report for duty at village Kamali. She, however, appears to have applied for sick leave, which according to the petitioner came to be sanctioned from 1st July, 1970 to 8th October, 1970 as leave without pay. Even thereafter, the petitioner did not report for duty. Since then on 17th September, 1991, the petitioner approached the concerned Minister and claimed that she was entitled to voluntary retirement in the year 1970 and to pay pension and other retiral benefits. On 19th September, 1995 petitioner applied to treat her as voluntarily retired since the month of October, 1970 and to pay her retiral benefits. The said application came to be rejected on 21st May, 1996 [Annexure-A to the petition]. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr. Rathod has submitted that after expiry of the leave sanctioned to the petitioner, she had applied for voluntary retirement. The said application was accepted in the year 1988. The petitioner was assured that her pension papers would be processed soon. However, on account of the remissness on the part of the officers, her pension papers were misplaced and no pension was sanctioned to the petitioner. Feeling aggrieved, the petitioner approached the concerned minister and had made several representations. She was assured of her pension. However, by impugned order dated 21st May, 1996, she has been refused voluntary retirement on the ground that on 1st July, 1970; the date since when the petitioner was absent from service, the voluntary retirement scheme was not introduced. Mr. Rathod has submitted that the ground on which the petitioner's application is rejected is not germane and is not sustainable. He has submitted that the voluntary retirement scheme was introduced on 8th October, 1970. The petitioner's absence from service

for the period of 100 days from 1st July, 1970 to 8th October, 1970 came to be sanctioned by the District Primary Education Officer by order dated 15th September, 1977. The petitioner, therefore, cannot be said to be absent from service from 1st July, 1970. The said fact has been ignored by the respondent authorities. He has, therefore, submitted that the petitioner is entitled to be treated as voluntarily retired with effect from 8th October, 1970 and is entitled to retiral benefits.

I see no substance in this petition. As recorded hereinabove, the petitioner was transferred to village Kamali and was relieved from Patan on 30th June, 1970. She did not report for duty at village Kamali on 1st July, 1970 and remained absent from service continuously. Her leave for the period from 1st July, 1970 to 8th October, 1970 also has been sanctioned by the District Education Officer in the year 1977 i.e., after continuous absence of seven years. The averments with regard to the petitioner's making application for voluntary retirement and the sanction granted in the year 1988 and the misplacement of pension papers are too vague to be accepted. Except bare averments made by the petitioner, there is not a single piece of document suggesting even remotely that the petitioner had ever applied for voluntary retirement or that such voluntary retirement was ever permitted. The first representation which the petitioner has produced on record is that of the year 1991. Thus, it appears that the petitioner chose not to report for duty on her transfer to village Kamali till the date she reached the age of superannuation. Thereafter, she has started making representations to allow her to retire from service with effect from October, 1970 and to pay her retiral benefits. The intention of the petitioner is not laudable. It is evident that on her transfer from Patan, the petitioner abandoned her service. Neither did she report for duty at the place of her posting nor did she applied for voluntary retirement, as asserted by the petitioner. She did not even make representation for alternative posting. The claim that the petitioner had applied for voluntary retirement is an afterthought, made with a view to earning retiral benefits. As the petitioner has abandoned the service, she cannot be said to have voluntarily retired from service or retired from service at all. She, therefore, is not entitled to pension or retiral benefits.

For the aforesaid reasons, the petition is dismissed with cost. Rule is discharged.

{Miss R.M Doshit, J.}

Prakash*